

Office of the Secretary of Labor

§ 4.143

even agree to pay the Government in return for the right to dispose of the salvaged materials, the contract will be deemed one in excess of \$2,500 if the value of the property obtained by the contractor, less anything he might pay the Government, is in excess of such amount. In addition, concession contracts are considered to be contracts in excess of \$2,500 if the contractor's gross receipts under the contract may exceed \$2,500.

(b) All bids from the same person on the same invitation for bids will constitute a single offer, and the total award to such person will determine the amount involved for purposes of the Act. Where the procurement is made without formal advertising, in arriving at the aggregate amount involved, there must be included all property and services which would properly be grouped together in a single transaction and which would be included in a single advertisement for bids if the procurement were being effected by formal advertising. Therefore, if an agency procures continuing services through the issuance of monthly purchase orders, the amount of the contract for purposes of application of the Act is not measured by the amount of an individual purchase order. In such cases, if the continuing services were procured through formal advertising, the contract term would typically be for one year, and the monthly purchase orders must be grouped together to determine whether the yearly amount may exceed \$2,500. However, a purchase order for services which are not continuing but are performed on a one-time or sporadic basis and which are not performed under a requirements contract or under the terms of a basic ordering agreement or similar agreement need not be equated to a yearly amount. (See § 4.142(b).) In addition, where an invitation is for services in an amount in excess of \$2,500 and bidders are permitted to bid on a portion of the services not amounting to more than \$2,500, the amounts of the contracts awarded separately to individual and unrelated bidders will be measured by the portions of the services covered by their respective contracts.

(c) Where a contract is issued in an amount in excess of \$2,500 this amount

will govern for purposes of application of the Act even though penalty deductions, deductions for prompt payment, and similar deductions may reduce the amount actually expended by the Government to \$2,500 or less.

§ 4.142 Contracts in an indefinite amount.

(a) Every contract subject to this Act which is indefinite in amount is required to contain the clauses prescribed in § 4.6 for contracts in excess of \$2,500, unless the contracting officer has definite knowledge in advance that the contract will not exceed \$2,500 in any event.

(b) Where contracts or agreements between a Government agency and prospective purveyors of services are negotiated which provide terms and conditions under which services will be furnished through the use of service employees in response to individual purchase orders or calls, if any, which may be issued by the agency during the life of the agreement, these agreements would ordinarily constitute contracts within the intentment of the Act under principles judicially established in *United Biscuit Co. v. Wirtz*, 17 WH Cases 146 (C.A.D.C.), a case arising under the Walsh-Healey Public Contracts Act. Such a contract, which may be in the nature of a bilateral option contract or basic ordering agreement and not obligate the Government to order any services or the contractor to furnish any, nevertheless governs any procurement of services that may be made through purchase orders or calls issued under its terms. Since the amount of the contract is indefinite, it is subject to the rule stated in paragraph (a) of this section. The amount of the contract is not determined by the amount of any individual call or purchase order.

CHANGES IN CONTRACT COVERAGE

§ 4.143 Effects of changes or extensions of contracts, generally.

(a) Sometimes an existing service contract is modified, amended, or extended in such a manner that the changed contract is considered to be a new contract for purposes of the application of the Act's provisions. The general rule with respect to such contracts